IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24656 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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TEHMUL SETHNA, CHAIRMAN SHIVAM SATELLITE CO-OP HOSG. - Petitioner(s)

Versus

AHMEDABAD URBAN DEVELOPMENT AUTHORITY & 4 - Respondent(s)

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Appearance :

MR JA ADESHRA for Petitioner(s) : 1,
MR RD DAVE for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,
MR PRAKASH K JANI for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 24/01/2006

ORAL JUDGMENT

1. In the present petition, though much wider relief has been claimed by the petitioner in Para 7(A) of

the petition, learned advocate for the petitioner Mr. Adesara made it clear at the outset that the petitioner confines present petition to the question of respondent Nos. 4 and 5 using 7.5 metres wide road for the purpose of entry and exit into the high rise building constructed by them to be used by the residents of the building for the purpose of parking their vehicles. He further sought and was granted permission to raise other grievances in separate proceedings.

2. In view of the above request made, the present petition revolves around a limited question. The petitioner is Chairman of a Co-operative Housing Society having bungalow near and around a plot bearing No. 426 of Town Planning Scheme No. 1/B of Village Bodakdev, Taluka-Daskroi, District-Ahmedabad. Respondent Nos. 4 and 5 have applied for and have received development permission from Respondent No.1. - Ahmedabad Urban Development Authority (hereinafter referred as “AUDA” for short) for putting up a scheme of residential flats on the plot in question. The proposed structure is likely to be high rise building. The building plans submitted by respondent Nos. 4 and 5 have been approved by the authorities and the construction is under way. It is not in dispute that the

said plot abuts on a road having width in excess of 18 metres. It is also not in dispute that the plot in question has frontage of more than 15 metres on such road which is wider than 18 metres. The said plot however, also has an approach road of width of 7.5 metres. The petitioner-society also uses the said 7.5 metres road as an approach road for many of the plots of the society on which the members of the society have constructed their houses. It is the stand of the petitioner – Society that the law requires that no high rise building can be permitted to be constructed as per the Building Regulation of Respondent No.1 – AUDA, until and unless the plot on which the high rise building is to be constructed abuts on a road which has minimum width of 18 metres and that the frontage of the plot on such road is not less than 15 metres. It is contended that the reason behind making such requirement mandatory is that looking to the higher concentration of the residential units of high rise building, the vehicular congestion would be avoided only if plot enjoys these benefits. It is contended that in essence therefore, such high rise building can have access only through such wide road and not from any other side. In fact, it is contended that though plot on which respondent no.4 and 5 are

constructing high rise building containing residential flats abuts on road which is wider than 18 metres and the frontage of the plot is also more than 15 metres on such road, the proposed building cannot use any other road for the purpose of accessing the said building. It is the grievance of the petitioner that respondent Nos. 4 and 5 propose to use 7.5 metres approach road for accessing the parking area for the vehicles of residents of the building. It is contended that respondent no. 1 – AUDA ought to have prevented such use since the same breaches the provisions contained in General Development Control Regulations (hereinafter to be referred to as “GDCR” for short).

3. Respondent Nos. 4 and 5 have filed affidavits opposing the petition. Relying on the affidavit filed by respondent No.4 and 5, learned advocate Shri P.K.Jani submitted that the stand of the petitioner is not sustainable. He contended that AUDA has granted necessary permission for development of the plot in question and has approved the building plans submitted by the said respondents. He submitted that the plot in question and the development plans approved by the authorities breach no conditions of the GDCR. He submitted that entry of

vehicles to the building in question is open from the side where building abuts on the broader road. Residents and visitors to the building will have ingress and egress to the building from that side. In addition thereto, as an additional facility for the residents of the building, 7.5 metres of road will be used for approaching parking area for their vehicles inside the building and lead them into underground parking. He submitted that the same cannot be objected to or prevented by the petitioner. He further submitted that the road is a Town Planning Road and the petitioner cannot have exclusive use of the said road, as the same is a public road.

4. Learned advocate Shri R.D.Dave for AUDA opposed the petition and supported the stand of Respondent Nos. 4 and 5.

5. In view of the above controversy, short question arises, whether above arrangement made by respondent Nos. 4 and 5 while making construction of high rise building on the plot in question, breaches any legal provisions and whether the petitioner can object to 7.5 metres approach road being used by the residents of the building for their personal use.

6.1 GDCR, 12.1 and 12.2, to which the learned advocate for the petitioner relied reads as under:

“12.1(A) USES NOT PERMISSIBLE.

The development shall be regulated according to the width of the road on which it abuts subject to use zone table as follows:

Road Width	**Uses not permissible**
a) 18 mts. & above.	All educational institutes up to SSCE level.
b) 12 mts. And less than 18 mts.	(1) High rise buildings, Cinema Hall, meeting/ community / lecture / town hall, auditorium, petrol pump, head and Regional / public / establishments, starred-hotels, college, technical institution, general hospital, polyclinic. (2) Provided in the case of draft T.P. Scheme area submitted to the Government for sanction, up to the date of publication of the revised draft development plan under section – 13 of the Act, high rise building shall be permitted on 12mts. And above roads.
c) 9 mts. And less than 12 mts.	(1) All uses mentioned in (b) above and building with more than 13 mt. Height (Excluding hollow plinth)

Road Width	Uses not permissible
d) less than 9 mts.	All uses mentioned in (C) above and building with more than 10 mts. Heigh Apartments / Flat type building (Excluding hollow plinth).

Note :

Provided that these regulations shall not be applicable for authorized existing uses prior to these regulations.

(B) USES PERMISSIBLE FOR COMMERCIAL DEVELOPMENT

Road Width	FLOOR
1) 9 mts. And less than 12 mts.	Only Ground floor.
2) 12 mts and less than 18 mtr.	Ground and First floor.
2) 18 mts. And above	All Floors.

12.2 MINIMUM AREA OF A BUILDING UNIT.

(a) *Minimum area of a building unit shall be 100 Sq.Mts. with no side to be less than 9 mts. Building unit with area of 100 Sq.Mts. may be allowed on roads upto to 9 mts. width and less. Building unit with area more than 100 Sq.Mts. and upto 200 Sq.Mts. may be allowed on roads upto 12 mts. width. The Building Unit having rectangular shape having the ratio between the length of the adjacent side shall not more than 2. However, this condition of ratio will not be applicable, if the smaller side of the Building Unit is 10.50 mts. or more in length. Minimum area of a building unit for high rise building shall be 1500 Sq.Mts. and it shall front on at least 18 mts. or more wide Development Plan*

roads or Town Planning Scheme Roads and that the frontage of the plot on such roads shall not be less than 15 mts.

(b) Minimum area of a Building Unit for primary school and High School shall be 1000.00 Sq.Mts.

(C) Minimum area of Building Unit for Educational institute, commmunity hall, marriage hall, Town hall, Assembly hall (All types of hall), cinema, theatre shall be 2000.00 Sq.mts.

(d) Minimum area of a Building Unit for petrol pump without service station shall be 1000.00 Sq.Mts. and petrol pump with service station shall be 2000.00 Sq.Mts.

(e) Minimum area of building unit for worship and religious places shall be 500 Sq.Mts. and maximum built-up area shall not be more than 20% of the Building unit area.

Note : Above provisions are not applicable for residential housing scheme for socially and Economically Backward Class of people."

6.2 GDRC 10.5.1 may also be noted. The same reads as under:

"10.5.1 For Residential Development

The width of the approach from the street to the building shall not be less than 3.00 mt. in case of length of such approach is equal to or less than 15.00 mts. in length, 4.50 mt. in case of length of such approach is more than 15.00 mts. and upto 45.0 mt. in length. Whereas in the case of approaches exceeding 45.00 mts. in length regular width of the road, prescribed in this regulation, shall be provided."

6.3 From the above development and regulations, it

can be noted that on a plot which abuts on a road having width of less than 18 metres, no high rise building is permitted. On the other hand, as per Clause(B) of Regulation 12.1. on a plot of land which abuts on a road which has width of 18 metres and above, permission for commercial development can be granted for all floors.

6.4. Regulation 12.2. further requires that minimum area of building unit for high rise building shall be 1500 Sq.Mts. and it shall front on atleast 18 metres or wider Development Plan Roads or Town Planning Scheme Roads and that the frontage of the plot on such road shall not be less than 15 metres.

7. As noted earlier, plot in question on which construction is under way breaches none of these conditions. It is not in dispute that the plot area is in excess of 1500 Sq.Mts. and that it abuts on a road which has width of excess of 18 metres and that frontage of plot in question of such road is not less than 15 metres.

8. In that view of the matter, Respondent No.1 committed no error in permitting Respondent No.4 and 5 to develop the said plot and construct high rise residential

unit thereon. This conclusion is only with respect to the question of requirement of regulations 12.1. and 12.2. of GDCR. The question still remains, whether respondent No.4 and 5 can provide for access to the proposed building to its residents through narrow 7.5 metres wide approach road. In this regard GCDR 10.5.1, which has been reproduced hereinabove, needs to be taken into consideration. The said regulation provides for minimum width of 4.5. metres if the approach road is more than 15 metres but not more than 45 metres. In any case approach road in exceeding of 45 metres length, it requires the width of the road, as may be prescribed in the regulation. It is not the case of the petitioner that such regulation is violated in the present case.

9. It is the case of the petitioner, that by permitting the respondents to use the said road, respondent Nos. 4 and 5 would be breaching the regulations as contained in 12.1 and 12.2 of the development regulation. I am unable to agree. Once the plot in question fulfills requirements contained in the said regulations, then there is nothing to prohibit the respondents of proposed building from utilising any other approach road, in addition to 18 metres wide road. What

is required is that the building abuts on a road which has width of at least 18 metres and that frontage thereon may not be less than 15 metres. Once these requirements are satisfied then there is no prohibition against the residents of such buildings from utilising any other approach road which is a public road. The situation would have been some what different, had respondent Nos. 4 and 5 completely blocked the access to the building from the side where the plot abuts on wider road. However, that is not the case here and that is not the allegation of the petitioner. Once free access is available to the proposed building from the wider road, any use of the approach road that too by the occupants of the proposed building cannot be objected to by the petitioner. In the result, I do not find that the petitioner could make out any case for interference with respect to challenge as confined by the petitioner in the petition. The petition is therefore, turned down and is rejected. Notice discharged. No order as to costs.

[Akil Kureshi, J.]

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